

RESOLUTION NO. 2002-212

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI RELATING  
TO ELECTRIC SYSTEM REVENUE CERTIFICATES OF PARTICIPATION;  
APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND  
DELIVERY OF AN AMENDED AND RESTATED ELECTRIC ENERGY  
PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT,  
A CERTIFICATE PURCHASE CONTRACT, A PRELIMINARY OFFICIAL  
STATEMENT AND AN OFFICIAL STATEMENT, AND APPROVING AND  
AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO

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WHEREAS, the City of Lodi, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), has established the Electric System (capitalized terms used herein and not otherwise defined shall have the meanings given such terms pursuant to Section 1.01 of the Trust Agreement referred to below) to serve the inhabitants of the City; and

WHEREAS, pursuant to the Public Utilities Code of the State, the City is authorized to acquire, own, control, sell or exchange rights of every nature for the purpose of operating the Electric System; and

WHEREAS, in order to assure adequate electricity to satisfy the expected load requirements of the inhabitants of the City, the City entered into the Original Agreement with Calpine providing for the purchase by the City of the Energy for the term of the Original Agreement; and

WHEREAS, pursuant to the Original Agreement, the City was obligated to take and pay for the Energy as delivered, resulting in the City's obligation to make installment purchase payments to Calpine in the amounts and at the times determined pursuant to the Original Agreement; and

WHEREAS, the City and Calpine have entered into the Amendment (the Original Agreement as amended and supplemented by the Amendment being herein referred to as the "Amended Agreement") pursuant to which the Original Agreement has been amended and supplemented to provide for three Parts, with the Original Agreement constituting Part II; and

WHEREAS, the City has sold its interests in the Energy to Calpine, and Calpine purchased the City's interests in the Energy, on the terms and conditions set forth in the Part III of the Amended Agreement; and

WHEREAS, pursuant to Part III of the Amended Agreement, the City and Calpine agreed upon the purchase price for the City's interests in the Energy and also agreed to net the payments due from the City for its purchase of the Energy from Calpine pursuant to the Original Agreement against the payments due from Calpine for its purchase of the City's interests in the Energy pursuant to Part III of the Amended Agreement, resulting in an obligation of the City to make certain installment payments to Calpine (the "Original Installment Payments"); and

WHEREAS, the City and Calpine agreed in Part III of the Amended Agreement that the Original Installment Payments were to be paid from Net Revenues of the City's Electric System; and

WHEREAS, Part I of the Amended Agreement provided the Lodi Public Improvement Corporation, a nonprofit, public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation") with the option to purchase all of Calpine's right, title and interest in and to Part III thereof, including the right to collect the Original Installment Payments; and

WHEREAS, the Corporation intends to exercise said option and acquire all of Calpine's right, title and interest in and to Part III of the Amended Agreement, including the right to collect the Original Installment Payments; and

WHEREAS, in order to facilitate the Corporation's financing of its acquisition of Calpine's right, title and interest in and to Part III of the Amended Agreement, to modify the Original Installment Payments as requested by the City, to conform the covenants and agreements of the City with respect to the Electric System and the Revenues with outstanding Parity Obligations of the City and to simplify the agreement between the City and the Corporation with respect to Part III of the Amended Agreement, the City and the Corporation have determined to amend and restate Part III of the Amended Agreement as provided in the Amended and Restated Electric Energy Purchase Agreement (the "Agreement"), dated as of November 1, 2002, between the City and the Corporation; and

WHEREAS, pursuant to the Agreement, the City will be obligated to make the Installment Payments to the Corporation from Net Revenues in the amounts, on the dates and on the terms and conditions set forth in the Agreement; and

WHEREAS, the City desires to approve the Corporation's acquisition of Calpine's rights in and to Part III of the Amended Agreement with the proceeds of the sale of the Electric System Revenue Certificates of Participation, 2002 Series C (the "Series C Certificates") and Electric System Revenue Certificates of Participation, 2002 Taxable Series D (the "Series D Certificates" and collectively with the Series C Certificates, the "Certificates"), evidencing and representing proportionate interests of the owners thereof in the Installment Payments to be made by the City pursuant to the Agreement; and

WHEREAS, the Certificates are to be executed and delivered pursuant to a Trust Agreement (the "Trust Agreement"), proposed to be executed by the Corporation and BNY Western Trust Company (the "Trustee"); and

WHEREAS, the City has been advised by bond counsel that the interest installments evidenced and represented by the Series D Certificates will not be excludable from gross income for purposes of federal income taxes by the owners thereof under the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and

WHEREAS, the City proposes to execute and deliver a Certificate Purchase Contract (the "Certificate Purchase Contract") with Salomon Smith Barney Inc. (the "Underwriter"), pursuant to which the Underwriter will purchase the Certificates for reoffering to the public, and to authorize the distribution of a Preliminary Official Statement, and the execution and delivery of an Official Statement and a Continuing Disclosure Agreement pertaining to the Certificates; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LODI, AS FOLLOWS:

Section 1. (a) The City Council hereby specifically finds and determines that the actions authorized hereby constitute and are with respect to the public affairs of the City and that the statements, findings and determinations of the City set forth above and in the preambles of the documents approved herein are true and correct and that the consummation of the transactions contemplated therein shall result in significant public benefits to the City in that the City expects to improve the operation of the City's Electric System as a result of the Corporation's acquisition of Calpine's rights in and to Parts I and III of the Amended Agreement and the execution and delivery of the Agreement by the City and the Corporation. The City Council hereby specifically further finds and determines that the interest installments evidenced and represented by the Series D Certificates will be subject to federal income taxation under current law.

(b) The Corporation's acquisition from Calpine assignee of all of Calpine's right, title and interest in and to Part III of the Amended Agreement with the proceeds of the sale of the Certificates is hereby approved. The Trust Agreement, including without limitation, the assignment and transfer by the Corporation of its rights in and to the Agreement to the Trustee as provided in the Trust Agreement, are hereby consented to and approved.

Section 2. The Agreement proposed to be executed and entered into by and between the City and the Corporation, in the form presented at this meeting and on file with the City Clerk, and the performance by the City of its obligations under the Agreement as executed and delivered in accordance with this Resolution are hereby approved. The City Manager and the Finance Director, each acting singly, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Corporation the Agreement in substantially said form, with such changes therein as the officer executing such document may approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, that the schedule of the installment payments to be contained in the Agreement and to be attached as exhibits thereto shall be determined by the City Manager or the Finance Director of the City upon the sale of the Certificates, but shall not exceed \$45,000,000 in aggregate principal amount, shall provide for installment payments not later than 35 years from the date of delivery of the Certificates, and shall result in a net interest cost not in excess of eight percent per annum.

Section 3. The Certificate Purchase Contract, proposed to be executed and entered into by and between the City and the Underwriter, in the form presented at this meeting and on file with the City Clerk, and the performance of the City of its obligation under the Certificate Purchase Contract as executed and delivered in accordance with this Resolution are hereby approved. The City Manager and the Finance Director, each acting singly, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Underwriter the Certificate Purchase Contract in substantially said form, with such changes therein as the officer executing such document may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The Preliminary Official Statement, in the form presented at this meeting and on file with the City Clerk, is hereby approved. The City Manager and the Finance Director, each acting singly, are hereby authorized and directed to cause the Preliminary Official Statement to be deemed final for purposes of Rule 15c2-12 of the Securities and Exchange Act of 1934 (the "Rule") and to be distributed to potential purchasers of the Certificates in substantially the form presented to this meeting with such changes therein as the officer deeming the Preliminary Official Statement final for purposes of the Rule may approve, such approval to be conclusively evidenced by deeming the Preliminary Official Statement final for purposes of the Rule.

Section 5. The preparation and delivery of an Official Statement, and its use by the Underwriter in connection with the offering and sale of the Certificates are hereby approved. The Official Statement shall be substantially in the form of the Preliminary Official Statement with such changes therein as the officer executing the Official Statement may approve, which approval to be conclusively evidenced by such officer's execution and delivery thereof. The City Manager and the Finance Director, each acting singly, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Official Statement and any amendment or supplement thereto contemplated by the Certificate Purchase Contract, in the name and on behalf of the City, and thereupon to cause the final Official Statement and any such amendment or supplement to be delivered to the Underwriter.

Section 6. The Continuing Disclosure Agreement, proposed to be executed and entered by the City and the Trustee, in the form presented at this meeting and on file with the City Clerk, and the performance by the City of its obligations under the Continuing Disclosure Agreement as executed and delivered in accordance with this Resolution are hereby approved. The City Manager and the Finance Director, each acting singly, are hereby authorized and directed for and in the name and on behalf of the City to execute and deliver the Continuing Disclosure Agreement in substantially said form, with such changes therein as the officer executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. The City Clerk is hereby authorized and directed to attest the signature of the City Manager or the Finance Director and to affix and attest the seal of the City, as may be required or appropriate, in connection with the execution and delivery of the Certificates and the documents approved by this Resolution.

Section 8. The officers of the City are hereby severally authorized and directed to do any and all things (including the negotiating and obtaining of a municipal bond insurance policy or reserve fund surety bond with respect to the Certificates if the City Manager or Finance Director determine that such insurance policy or surety bond will result in savings to the City) and to execute and deliver any and all documents which they may deem necessary or desirable in order to consummate the transactions authorized hereby and to consummate the sale, execution and delivery of the Certificates and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Agreement, the Continuing Disclosure Agreement, the Certificate Purchase Contract, the Preliminary Official Statement, the Official Statement and the Certificates; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 9. This Resolution shall take effect immediately upon its passage.

Date: October 22, 2002

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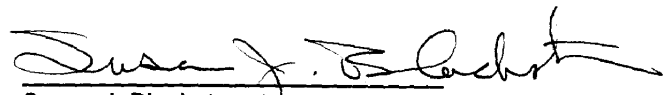
I hereby certify that Resolution 2002-212 was passed and adopted by the City Council of the City of Lodi in a special meeting held October 22, 2002 by the following votes:

AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino


NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

  
Susan J. Blackston  
City Clerk

Approved As to Form:

  
Randall A. Hays  
City Attorney